

Section 170. Charitable, Etc. Contributions and Gifts 26 CFR 1.170A-1, Charitable, etc., contributions and gifts; allowance of deduction.

Charitable contributions; utility bills; emergency energy program. Utility customers, who pay additional amounts on their utility bills to a utility company acting as agent for a charitable organization that assists individuals with emergency energy needs, are entitled to a charitable deduction for the additional amount in the year paid.

#### ISSUE

Whether customers who pay additional amounts on their utility bills to a utility company acting as an agent for a charitable organization that assists individuals with emergency energy needs, are allowed a charitable contribution deduction for such added amounts under section 170(a) of the Internal Revenue Code.

#### FACTS

O, a local chapter of a national charitable organization described in section 170(c) of the Internal Revenue Code, established a program designed to provide financial assistance to elderly and handicapped individuals in meeting their emergency energy related needs. O entered into an agreement with X, a local utility company, to facilitate the collection of charitable contributions made by customers of X and others. Under the agreement, O designated X as its authorized agent to collect contributions to the program on O's behalf. Customers of X are given the opportunity of making contributions to O's financial assistance program for the elderly and handicapped when making payments for utility services. Provided a customer pays his monthly bill in full, an additional amount may be paid to X and designated, in a space provided on the bill, as being earmarked for O's financial assistance program. Such earmarked amounts collected by X are transferred to O on a weekly basis. During the period between receipt of such amounts and their subsequent transfer to O, they are segregated from X's own funds. Further, X does not exercise any dominion or control over the earmarked funds and does not draw upon them to cover expenses incurred by X in connection with the program.

All determinations with respect to a person's eligibility to receive assistance under the program including the existence of an individual's emergency energy related needs are solely within the discretion of O.

#### LAW AND ANALYSIS

Section 170(a) of the Code provides, subject to certain limitations, a deduction for charitable contributions and gifts to

or for the use of organizations described in section 170(c), payment of which is made within the taxable year.

Section 1.170A-1(b) of the Income Tax Regulations provides that, ordinarily, a contribution is made at the time delivery is effected.

Rev. Rul. 55-192, 1955-1 C.B. 294, holds that the portion of the membership dues earmarked for distribution to qualified charities and paid by individual members to the treasurer of a social club, acting also as a collecting agent for certain charitable organizations, is deductible under section 170 of the Code for the year in which the contributions are paid to the treasurer.

In the instant case, X is acting as O's collection agent in receiving certain amounts in excess of monthly fees billed to X's customers that are earmarked for use by O. Further, X exercises no dominion and control over such amounts. Therefore, delivery of such amounts to X constitutes delivery to O for purposes of section 1170 of the Code.

#### HOLDING

A customer of X who makes a contribution under the program by adding an amount to the customer's utility bill will be entitled to a deduction for such amount in the manner and to the extent provided by section 170 of the Code in the taxable year the contribution is paid to X. A customer who pays no more than the amount of the utility bill, but nevertheless designates a portion of the payment as being earmarked for O's financial assistance program, will not be entitled to a deduction because X does not segregate such amounts and pay them to O, but retains the amounts as payment of the customer's utility bill.